



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 27 2011

REPLY TO THE ATTENTION OF:
SR-6J

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

MAILING LIST WITH ADDRESS AND CONTACT FOR EACH RECIPIENT IS
ATTACHED TO THIS LETTER

Northern States Power Company;
City of Ashland; and
Wisconsin Central Ltd.
Soo Line Railroad Company

Re: Special Notice Letter for the Ashland/Northern States Power Lakefront Site
Ashland, Wisconsin

Dear Sir or Madam:

This letter follows: (1) the general notice letter that the U.S. Environmental Protection Agency (EPA) previously sent to the Northern States Power Company in 2003; and/or (2) the letter EPA sent you requesting information pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C. § 9604(e), in connection with the Ashland/Northern States Power Lakefront Site ("the Site"), located in Ashland, Wisconsin. EPA is now notifying you of your potential responsibility under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. EPA is contacting you in an attempt to resolve your responsibility at the Site.

This letter serves three basic functions. First, it contains a formal demand for reimbursement of costs that have been incurred, including interest thereon, and that are expected to be incurred, which are subject to interest, in response to the health and environmental concerns at the Site. Second, this letter notifies you that a 60-day period of formal negotiations with the EPA for reimbursement of costs and for performance of remedial action automatically begins with this letter. Third, this letter provides general and site-specific information to assist you in these negotiations.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified you as one of the potentially responsible parties (PRPs) that contributed hazardous substances to the Site. Under the federal Superfund law, you and the other PRPs at the Site are responsible for the costs of cleaning up the Site. EPA selected a cleanup approach called a remedial action for the Site, which was described in a document called a Record of Decision (ROD) issued by EPA on September 30, 2010. The Northern States Power Company performed an investigation of the Site under EPA oversight pursuant to an Administrative Order by Consent (AOC) for a remedial investigation and feasibility study (RI/FS) dated November 14, 2003. The remedial action EPA selected for the Site and that is described in the ROD is based upon the results of the RI/FS.

The Site is divided into four main areas of concern: 1) sediments in Chequamegon Bay; 2) soil and shallow groundwater under Kreher Park; 3) soil and shallow groundwater under the Upper Bluff/Filled Ravine; 4) and deep groundwater in the Copper Falls Aquifer.

The selected remedy specified in the ROD will serve as the final action for soil, groundwater, and sediment contamination at the Site. The Site consists of soils, sediments, and groundwater contaminated by polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs). The most abundant constituents in each of these compounds include benzene, a VOC, and naphthalene, a PAH. Additionally, free phase hydrocarbons (free product) derived from tars are present as non-aqueous phase liquids (NAPL). The free product, or NAPL, is present in underground pockets of tar and other materials that do not readily mix with water. NAPL has also been found in subsurface sediments in the near shore area of the bay. Sediment contamination tends to be higher with depth below the sediment/water interface and is highest in the near shore area, decreasing with distance from the shoreline. Much of the contaminated sediment is covered with a layer of wood waste. The selected remedy specifies the following response actions:

- removal and treatment or off-site disposal of contaminated soil, groundwater and sediment, including all NAPL;
- engineered surface and vertical barriers to contain contaminated groundwater;
- groundwater extraction as hydraulic control and restoration and possible in-situ treatment of groundwater;
- long-term groundwater and sediment monitoring;
- institutional controls such as land use controls, to limit future site use to prevent exposure to hazardous substances that will remain at the Site after the remedy is complete.

EPA believes the response actions outlined in the ROD, if properly implemented, will protect human health and the environment. Because these measures would comprise remedial actions, Section 122(d)(1) of CERCLA, 42 U.S.C. §§ 9622(d)(1), requires that any agreement with the PRPs for performance of that work must be embodied in a consent decree (CD) and approved in federal court. After consultation with the U.S. Department of Justice, EPA is issuing this special notice letter for a remedial design/remedial action (RD/RA) CD.

Due to the large amount of wood waste and NAPL in the near shore area of the bay the ROD selected dry excavation as the preferred alternative for the near shore area of the bay, but allows for a pre-design pilot test to determine if wet dredging near shore sediments can achieve the performance standards. If the pre-design pilot test shows that wet dredging of near shore sediments can achieve the performance standards then EPA, in consultation with the Wisconsin Department of Natural Resources (WDNR), will issue an Explanation of Significant Difference (ESD) selecting wet dredging for the bay sediments portion of the remedy.

Special Notice and Negotiation Moratorium

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between you, other PRPs, and EPA for performance of RD/RA at the Site.

Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day period, you and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the RD/RA. The 60-day negotiation moratorium will be extended for an additional sixty (60) days if PRPs provide EPA with a “good faith offer” to conduct or finance the RD/RA. If settlement is reached between EPA and the PRPs within the 120-day negotiation moratorium, the settlement will be embodied in a CD.

If a “good faith offer” is not received within sixty (60) days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the RD/RA and pursue a cost recovery claim under Section 107 of CERCLA against you and/or the other PRPs; or (2) EPA may issue a Unilateral Administrative Order (UAO) to you and/or the other PRPs under Sections 104 and 106(a) of CERCLA, 42 U.S.C. §§ 9604 and 9606, requiring you or them to perform the work described in the Statement of Work attached to this notice letter. If the recipients of a UAO refuse to comply with the UAO, EPA may pursue civil litigation against the recipients to require compliance.

Good Faith Offer

A proposed Consent Decree and Statement of Work is enclosed to assist you and other PRPs in developing a “good faith offer” for conducting the RD/RA. As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if the PRPs submit a “good faith offer” to EPA. A “good faith offer” to conduct or finance the RD/RA is a written proposal that demonstrates the PRPs’ qualifications and willingness to conduct or finance the RD/RA and includes the following elements:

- A statement of willingness by the PRPs to conduct or finance the RD/RA that is consistent with EPA’s Statement of Work (SOW) and draft CD and provides a sufficient basis for further negotiations;
- A paragraph-by-paragraph response to EPA’s draft SOW and CD;

- A detailed description of the work plan identifying how the PRPs plan to proceed with the work;
- A demonstration of the PRPs' technical capability to carry out the RD/RA, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);
- A demonstration of the PRPs' willingness and capability to finance the RD/RA;
- A statement of willingness by the PRPs to reimburse EPA for past response costs and for costs incurred in overseeing the PRPs' conduct of the RD/RA; and
- The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

In this instance, EPA and the Northern States Power Company have begun discussing a potential approach to the Site cleanup in which the Northern States Power Company would perform a pre-design pilot test, as described in the ROD, to evaluate the efficacy of wet dredging in the near shore area of the bay. Under the framework discussed between EPA and Northern States Power, settling parties would proceed with the RD/RA to address the soil and shallow groundwater in Kreher Park, soil and shallow groundwater under the Upper Bluff/Filled Ravine, and deep groundwater in the Copper Falls Aquifer of the Site concurrently with the design and implementation of the pre-design pilot test for the bay sediments portion of the Site. Therefore EPA will consider a proposal to be a "good faith offer" if it meets the criteria listed above for the Kreher Park, Upper Bluff/Filled Ravine and Copper Falls Aquifer portions of the RD/RA and if a pre-design pilot test proceeds. Should the parties proceed along this approach, EPA anticipates a second consent decree for an RD/RA for the bay sediments portion of the Site. You would remain potentially liable for the work and costs associated with the second consent decree as well.

Demand for Reimbursement of Costs

With this letter, EPA demands that you reimburse EPA for its unrecovered costs incurred to date, and encourages you to voluntarily negotiate a CD in which you and other PRPs agree to perform the RD/RA.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include: site assessment, investigation and identification of PRPs, oversight of PRP preparation of the RI/FS, selection of the site cleanup, coordination with and funding of response actions taken by the WDNR. EPA is seeking to recover from you and other PRPs at the Site its unrecovered response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the approximate total unreimbursed response costs identified through November 13, 2003, for the Site are \$1,303,020.25. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you and other PRPs for the above amount plus all

interest authorized to be recovered under Section 107(a). A summary of these costs is included as Enclosure 4. EPA can provide a more detailed cost summary to those parties who request one. The United States also has claims for Natural Resource Damages under Section 107(4)(c) of CERCLA, 42 U.S.C. § 9607(c)(4), and any settlement will have to include the payment of money and/or performance of work to restore affected natural resources.

As indicated above, EPA anticipates expending additional funds for the RD/RA. Whether EPA funds the entire RD/RA, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to you or predecessor companies. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as creditor, because EPA has a potential claim against you. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

PRP Steering Committee

To assist PRPs in negotiating with EPA concerning this matter, EPA is attaching to this letter a list of the names and addresses of other PRPs to whom it is sending this Notice.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. The Administrative Record file is available for review at:

- the EPA Region 5 Records Center, 77 West Jackson Boulevard, Chicago, Illinois;
- the Vaughn Public Library, 502 W. Main St. Ashland, Wisconsin;
- the Bad River Public Library, 100 Maple St., Odanah, Wisconsin; and
- the Red Cliff EPA Office, 88385 Pike Road, Highway 13, Bayfield, Wisconsin.

You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

You are encouraged to contact EPA as soon as possible to indicate your willingness to participate in future negotiations concerning this Site. You may respond individually or as part of a group response from all of the PRPs. If EPA does not receive a timely response EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the

Site and that you have declined any involvement in performing the response activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the RD/RA for the Site, should be sent to:

U.S. Environmental Protection Agency
Region 5
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Remedial Project Manager
Superfund Division (SR-6J)
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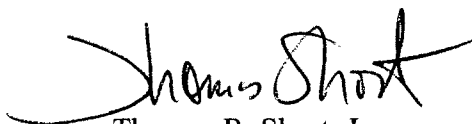
The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that you give immediate attention and prompt response to this letter.

In addition, the United States has notified the Federal Natural Resource trustees of its intention to perform or enter into negotiations for the performance of the RD/RA at the Site.

If you have any questions regarding the technical aspects of this letter, please contact Scott Hansen, Remedial Project Manager, at (312) 886-1999 or by e-mail at Hansen.Scott@epa.gov. If you have an attorney handling your legal matters, please direct his or her questions to Craig Melodia, Associate Regional Counsel at (312) 353-8870 or by e-mail at Melodia.Craig@epa.gov.

My staff and I look forward to working with you during the coming months.

Sincerely,



Thomas R. Short, Jr.
Chief, Remedial Response Branch #2

Enclosures

1. List of Respondents

2. Proposed RD/RA CD
3. Statement of Work
4. Itemized Cost Summary

cc (w/encl): Dan Graff, Wisconsin Department of Natural Resources
John Robinson, Wisconsin Department of Natural Resources
Jamie Dunn, Wisconsin Department of Natural Resources

ENCLOSURE 1

**ASHLAND/NORTHERN STATES POWER LAKEFRONT SITE
PRP DISTRIBUTION LIST
APRIL 2011**

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